

§ 53-244.103. Surety bond requirements.

(a) Except as provided in subsection (a1) of this section, each mortgage loan originator or transitional mortgage loan originator shall be covered by a surety bond through employment with a licensee in accordance with this section. The surety bond shall provide coverage for each mortgage loan originator or transitional mortgage loan originator employed by the licensee in an amount as prescribed by subsection (b) of this section and shall be in a form prescribed by the Commissioner. The Commissioner may adopt rules with respect to the requirements for the surety bonds as needed to accomplish the purposes of the Article.

(a1) The requirements of subsection (a) of this section shall not apply to a mortgage loan originator or transitional mortgage loan originator employed only by a registrant for the sole purpose of supervising and controlling loan processors or underwriters.

(b) Licensees shall be required to post a surety bond with the Commissioner at application to be subsequently adjusted as follows:

- (1) A mortgage broker shall post a minimum surety bond of seventy-five thousand dollars (\$75,000). Provided, however, if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ten million dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the mortgage broker's minimum bond amount shall be one hundred twenty-five thousand dollars (\$125,000), and if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars (\$50,000,000) or more, the mortgage broker's minimum bond shall be two hundred fifty thousand dollars (\$250,000).
- (2) A mortgage lender or mortgage servicer shall post a minimum surety bond of one hundred fifty thousand dollars (\$150,000). Provided, however, if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ten million dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the mortgage lender's minimum bond amount shall be two hundred fifty thousand dollars (\$250,000), and if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars (\$50,000,000) or more, then the mortgage lender's minimum bond shall be five hundred thousand dollars (\$500,000).
- (3) Any increased surety bond required under subdivision (1) or (2) of this subsection shall be filed with the Commissioner on or before May 31 immediately following the end of the 12-month December 31 period.

(c) The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond. In this case, the licensee shall file a replacement bond in the required amount within 30 days. Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

(d) In the Commissioner's discretion and upon written request of the licensee, the Commissioner may waive the requirement of the bond for any licensee, if:

- (1) The licensee has been licensed by the Commissioner for at least three years;

- (2) The licensee can demonstrate a net worth, according to the most recent audited financial statement, at least four times the required bond amount, and the licensee certifies that its net worth will be maintained at or above this level at all times and agrees to notify the Commissioner and to secure an appropriate bond in the event the net worth falls below this level;
- (3) The Commissioner believes the licensee has a satisfactory history of resolving complaints from consumers and responding to findings of investigations or examinations by the Commissioner; and
- (4) The Commissioner has no reason to believe the licensee will be unable to resolve complaints, respond to examination or investigative findings, or fulfill financial obligations under this Article.

(e) If the Commissioner has waived the bond requirement of a licensee based on subsection (d) of this section, the Commissioner may summarily reinstate the bond requirement on any licensee if the Commissioner has reason to believe the licensee no longer meets the standards in subsection (d) of this section. In this event, the licensee shall submit a bond, as required in subsection (b) of this section, within 30 days. Failure to submit a bond as directed by the Commissioner shall be grounds for summary suspension. (2009-374, s. 2; 2013-327, s. 7; 2015-293, s. 1.)